

Calendar No. 672

82D CONGRESS }
1st Session }

SENATE

{ REPORT
No. 715

PRESTON L. WATSON, AS ADMINISTRATOR OF GOODS AND CHATTELS, RIGHTS, AND CREDITS WHICH WERE OF ROBERT A. WATSON, DECEASED

AUGUST 27 (legislative day, AUGUST 1), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted
the following

REPORT

[To accompany H. R. 990]

The Committee on the Judiciary, to which was referred the bill (H. R. 990) to confer jurisdiction on the Court of Claims to hear, determine, adjudicate, and render judgment on the claim of Preston L. Watson, as administrator of the goods and chattels, rights, and credits which were of Robert A. Watson, deceased, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill as amended do pass.

PURPOSE

The purpose of the proposed legislation is to confer jurisdiction upon the Court of Claims to hear, determine, adjudicate, and render judgment on the claim of Preston L. Watson, as administrator of the goods and chattels, rights, and credits which were of Robert A. Watson, deceased, against the United States for alleged loss and damages suffered by Robert A. Watson arising out of certain transactions involving the purchase of 3,500 tons of sugar in the Republic of Argentina, in June 1920, and the importation into the United States thereof. The amendment negatives any implication of liability on the part of the United States.

STATEMENT

During the spring and summer of 1920 there was a shortage of sugar in the United States which resulted in a rise in the price of that commodity. During that period the authority which had been vested in the United States Food Administration was vested in the

Department of Justice. At the same time that Department was charged with the enforcement of the antiprofitereering provisions of the Lever Act. In an endeavor to increase the supply of sugar in this country to a normal amount and to reduce the price to the consumers, representatives of the Department of Justice encouraged a number of merchants to import sugar from the Argentine, agreeing that if the sugar were resold at prices, and in the manner, approved by the representatives of that Department, no prosecutions would be instituted under the Lever Act in respect to such transactions.

Mr. Robert A. Watson claimed to be one of the merchants so encouraged. It was the contention of Mr. Watson that he had imported approximately 3,500 tons of sugar into this country in June 1920, in furtherance of this program. Mr. Watson claimed that he made trips to Washington during which time he talked to a Mr. Howard Figg who was at that time a special assistant to the Attorney General and in charge of getting the sugar into the United States, and then later to his successor, Mr. Armin W. Riley. He further alleged that during these conferences he was assured that every pound of sugar that he could secure could be sold in accordance with orders already on file with the Department of Justice. Further, according to Mr. Watson, Mr. Riley agreed that if Mr. Watson would undertake the importation of sugar from Argentina; would limit his profit on the landed cost of the sugar; would vest exclusive control of the distribution of the sugar in the Department of Justice; and inform it of all purchases of sugar made by him and the cost thereof, there would be no prosecution under the Lever Act. Following these conferences Mr. Watson wrote to the Department confirming the understanding reached at the conferences. He expressed a willingness to import the sugar upon the following conditions: (1) That he be permitted to market the sugar at not exceeding 20 cents a pound; (2) that should the cost price to him of the sugar increase or decrease, the selling price would be increased or decreased proportionately; and (3) that he would permit the Department of Justice to designate the channels through which the sugar should be distributed. The Department of Justice, through Mr. Riley, accepted the terms set forth in Mr. Watson's letter.

Later Mr. Watson purchased 3,500 tons of sugar in Argentina, and in accordance with the agreement with the Justice Department, Mr. Watson informed the Department that he had purchased the Argentine sugar, and asked the Department for advice as to the channels into which this sugar was to be diverted. Mr. Watson has asserted that under the agreement, three such orders were forthcoming totaling only 120 tons of sugar. No further bookings were given Mr. Watson. At this time, due to the importation of sugar from Argentina, the price of sugar declined. Mr. Watson was faced with the difficulty of having tons of sugar on hand in a declining market. Consequently, he was forced to sell this sugar at the best prices then available. This resulted in a loss to him of \$739,538.04.

Beginning in 1922, Mr. Watson caused a bill for his relief to be introduced in that Congress and in succeeding Congresses. Several of the bills were reported favorably by the committees, but failed of passage. In 1937, however, a Senate bill to hear, determine, and render judgment on the claim of Mr. Wilson, passed both Houses, but was vetoed by the President. In the Eighty-first Congress, a bill similar to that now proposed was introduced and was passed by the House of Representatives. It was amended somewhat by the Senate but in conference

the Senate conferees agreed to the amendments contained in the bill as it is now phrased. Later the Senate adopted the conference report, but no action was taken in the House.

The Department of Justice is opposed to enactment of the instant legislation. That Department feels that the negotiations which led the importer to change his position only assured him that in view of the critical sugar shortage then prevailing there would be no prosecution under the Lever Act. The Department further asserts that there were no assurances given that purchasers would be furnished nor that the Department would indemnify the claimant against loss. The Department feels that the passage of the act would impose an unfair burden on the Department in requiring it to defend a claim almost 30 years old, when it will be extremely difficult to locate witnesses and evidence.

Claimant, on the other hand, asserted that the Department of Justice, in the negotiations which resulted in the purchase of sugar, must be held to have promised more than immunity from prosecution under the Lever Act. The claimant believes that under conditions then prevailing and the conditions imposed he was placed in such a position that the equitable principles of fair dealing require the Government to reimburse him for losses. He contends that the subject purchase cannot realistically be characterized as an ordinary business transaction. Certainly the claimant cannot be accused of being guilty of any delay. He has tried to obtain relief since 1922.

In order to point out that this bill creates no precedent not already established the claimant points out that other importers have by means of previous legislation been reimbursed for losses they sustained under circumstances similar to those present in the instant case. Some of them were repaid their losses through the United States Sugar Equalization Board in the year 1923. Thereafter another importer was authorized, by a private act of the Seventy-sixth Congress, approved October 14, 1940, to sue in the Court of Claims. The Court of Claims subsequently awarded judgment in that case.

The committee believes that the claimant should be afforded the opportunity to litigate the issues in the Court of Claims. This appears to be the sole remaining claim against the United States arising out of importation of sugar in aid of the Department of Justice. The merits of the claim seem indistinguishable from the merits of the claims already allowed and paid. Accordingly, it is the recommendation of the committee that the bill be favorably considered.

Attached to this report is the correspondence between Mr. Watson and the Department of Justice, the report of the Department of Justice on a similar bill, and the veto message relating to the bill passed by the Seventy-sixth Congress.

APPENDIX A

New York, June 19, 1920.

UNITED STATES DEPARTMENT OF JUSTICE,
Post Office Building, New York City.

(Attention of Mr. Armin W. Riley.)

DEAR SIR: In connection with the proposed purchase of a large quantity of refined Argentine sugar, I have been in communication with your office, both in Washington and in New York, in order to clarify the situation, particularly as regards the operation of the Lever Act applied to the sale of this sugar in the United States.

The facts are substantially these.

I am in a position to accept offers for refined Argentine sugar, which it was proposed to market in this country. In order to obtain the sugar, it was necessary to present the proposition to financial institutions so that proper arrangements could be made to establish credits necessary to finance the purchase.

You will appreciate that the regulations concerning the export of sugar, issued by the Government of the Argentine Republic, and the attendant hazards in connection with the purchase and sale of this sugar make this transaction entirely different from the ordinary transactions carried on by the ordinary wholesaler of sugar in this country.

In view of the great shortage of sugar in this country, it was deemed advisable to discuss with your department the advisability of bringing this sugar to America, and the possible effect of the Lever Act upon the profit believed to be necessary in order to meet the risks involved and the necessary financing.

Some days ago this situation was fully discussed with your department in Washington and the difficulties arising under the Lever Act seemed to be such as to make it inadvisable for me to pursue the matter further, but the great shortage of sugar in this country and the need to take measures to relieve the same has caused me to take up the matter anew with you in order to see if the transaction can be consummated. I am therefore laying the matter before you again for consideration, after an informal discussion with you today. I am prepared to do my best to carry the transaction through, provided your department will write me a letter giving its sanction to the importation of sugar from Argentina upon the following conditions:

1. Upon the basis of the present cost price to me of refined Argentine sugar, approximately 17½ cents per pound c. i. f. American ports, I propose to market the sugar at not exceeding 20 cents per pound.

2. Should the cost price to me of refined Argentine sugar change, the sale price by me would increase or decrease proportionately, as the case may be, so that the sale price might be either greater or less than 20 cents per pound, dependent upon the cost price to me.

3. I agree to permit your office to designate the channels through which this sugar shall be distributed, provided that the ultimate purchasers satisfy me as to their financial standing, and as to the terms of settlement.

Inasmuch as I expect to begin the importation of this sugar at once, it is highly important that your decision be rendered immediately, so that negotiations can be completed and credits cabled.

Yours very truly,

R. A. WATSON.

APPENDIX B

JUNE 23, 1920.

ARMIN W. RILEY,
United States Department of Justice,
Post Office Building, New York, N. Y.

DEAR MR. RILEY: I enclose your letter, which I think will cover the matter which we discussed this morning and if you can kindly hand bearer the response, I will proceed in this matter immediately.

I have 1,000 tons for July shipment and understand you are referring interested parties to me today or tomorrow. I will be pleased to see them at any time.

Very sincerely yours,

ROBERT A. WATSON.

APPENDIX C

DEPARTMENT OF JUSTICE,
Washington, D. C., June 23, 1920.

ROBERT A. WATSON, Esq.,
Care of the Nafra Co. (Inc.), 120 Broadway, New York.

DEAR MR. WATSON: This is to confirm our various conversations and in reply to your letters of June 19 and 23, 1920.

In view of the fact that the sugar requirements of the people of this country are in excess of the supply now available and in order to encourage the importation into this country of foreign sugars, you will be permitted to import the sugars mentioned upon the terms set forth in your said letters.

You are further informed that if you carry out the Department's requirements as to price and distribution as so set forth, no prosecutions under the Lever Act, as amended, will arise therefrom.

Yours very truly,

ARMIN W. RILEY,
Special Assistant to the Attorney General.

APPENDIX D

JUNE 24, 1920.

Mr. ARMIN W. RILEY,
*United States Department of Justice,
Post Office Building, New York, N. Y.*

DEAR MR. RILEY: I take this opportunity of confirming to you my agreement to distribute all sales made after this date of Argentine sugar which I may import in such direction as you may from time to time indicate, and I am very pleased indeed to think that with your cooperation I can supply those industries which are badly in need of this commodity at a lower net price than they can obtain in any other direction.

Thanking you for all your courtesies in this matter, I remain,

Very truly yours,

ROBERT A. WATSON.

APPENDIX E

NEW YORK, July 15, 1920.

DEPARTMENT OF JUSTICE,
Washington, D. C.

(Attention: Mr. Armin W. Riley.)

GENTLEMEN: Just a line to advise you that I have booked in all 3,500 tons Argentine sugar which will cost, landed in New York, duty paid 17½ cents, and I will be glad to have advices from the Department into what channels this sugar is to be diverted.

The quantity above mentioned includes the 1,000 tons I advised you in my letter of June 23.

Yours very truly,

R. A. WATSON.

APPENDIX F

CANNERS' SUPPLIES Co. (INC.),
New York, July 23, 1920.

Mr. WATSON, Esq.,
New York City.

DEAR SIR: Relative to the sale of one carlot of 60,000 to 80,000 pounds of Argentine grade A granulated refined sugar to F. B. Lovelace, of Poughkeepsie, N. Y., at 21 cents net per pound f. o. b. car New York, would advise that I have just written acknowledging this order, and in consideration of you reducing the price of this sugar to 19 cents net per pound f. o. b. New York, I have quoted a price to Mr. Lovelace of 20 cents per pound f. o. b. New York.

Will you kindly note this order on your books and oblige.

Very truly yours,

CANNERS' SUPPLIES Co. (INC.),
By JAMES BOYD, *President.*

APPENDIX G

NEW YORK, July 24, 1920.

CANNERS' SUPPLY Co. (INC.),
135 Broadway, New York City.

GENTLEMEN: I thank you for your order contained in your letter of yesterday's date. I have also booked the 30 tons for Bausch & Lomb Optical Co. and the 80 tons for your friends in Tampa confirming our verbal conversation of this morning.

As the sugar will shortly be arriving I would like to have the entire quantity placed so that arrangements can be made promptly as the sugar is unloaded from the vessel.

As previously advised you, I have cable advice that at least 1,000 tons are coming per steamship *Winona* and I hope to have further advices of a larger lot.

Yours very truly,

R. A. WATSON.

APPENDIX H

NEW YORK, August 3, 1920.

CANNERS' SUPPLY CO. (INC.),
135 Broadway, New York City.

GENTLEMEN: This will advise you that I will have in all, on board the steamship *Winona* about 1,900 tons.

As you have only given me orders up to now for 120 tons, please give me the bookings for the entire quantity as soon as possible. I understand that you have to fill orders for something between 15,000 and 20,000 tons.

Yours very truly,

R. A. WATSON.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ASSISTANT TO THE ATTORNEY GENERAL,
Washington, August 10, 1928.

HON. EARL C. MICHENER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department relative to the bill (H. R. 6173) to confer jurisdiction on the Court of Claims to hear and determine the claim of Preston L. Watson as administrator of the goods and chattels, rights, and credits which were of Robert A. Watson, deceased.

The bill would confer jurisdiction upon the Court of Claims to hear and determine the claim, together with interest thereon, of Preston L. Watson, administrator of the estate of Robert A. Watson, deceased, for alleged loss and damage suffered by decedent in certain transactions involving the purchase in Argentina in 1920 of certain amounts of sugar, the importation of such sugar into the United States and the alleged failure of the Department of Justice to provide for the distribution thereof in accordance with the terms of an agreement between decedent and the Department of Justice. The bill would also authorize the court to enter such decree or judgment against the United States for such loss and damage as equity and justice shall require. Section 2 of the bill would provide that in such proceedings the United States shall not avail itself of the defense that the Department of Justice or its officers acted without legal authority in making such agreement or fixing restrictions with regard to the importations and disposition of such sugar. Section 3 of the bill would provide that suit upon such claim may be instituted at any time within 6 months after the date of its enactment, notwithstanding the lapse of time, laches, or any statute of limitations. This section also provides that proceedings for the determination of such claim and appeals from, and payment of, any judgment thereon shall be in the same manner as in the case of claims over which such court has jurisdiction under section 145 of the Judicial Code, as amended.

The records indicate that Robert A. Watson has been asserting a claim against the Government aggregating a sum in excess of \$700,000. By proclamation issued on November 21, 1919, President Wilson transferred to the Department of Justice certain authority theretofore vested in the United States Food Administration. During the spring and summer of 1920 there appears to have been a shortage of sugar in the United States which resulted in a rise in the price of that commodity. The Department of Justice was at that time charged with the enforcement of the antiprofitteering provisions of the Lever Act. In an endeavor to increase the supply of sugar in this country to a normal amount, and to reduce the price to the consumers, representatives of this Department encouraged a number of merchants to import sugar from the Argentine, agreeing that if the sugar were resold at prices and in the manner approved by the representatives of this Department, no prosecutions would be instituted under the Lever Act in respect to such transactions.

Apparently, Mr. Robert A. Watson claimed to be one of this group. He claimed to have imported approximately 3,500 tons of sugar into this country in June 1920. It appears that, due to the various importations, the price of sugar in this country fell much lower than was anticipated, and Mr. Watson as we

as some of the other importers found themselves confronted with considerable losses as a result of these transactions. The purpose of the present bill is to permit the administrator of Mr. Watson's estate to sue the United States in the Court of claims for damages which he claims to have sustained in this regard.

Written statements made by Mr. Watson found in the files of this Department, indicate that Mr. Watson took the initiative in the matter and approached representatives of the Department of Justice for the purpose of ascertaining what, if any, restrictions would be imposed in the way of his importing sugar from the Argentine Republic. His discussions with attorneys of this Department culminated in a letter sent by him to the Department of Justice on June 18, 1920, in which he requested its sanction of the importation of sugar from the Argentine upon the condition that he would resell it at prices not to exceed those specified in the letter; and on the further condition that he would permit the Department to designate the channels through which the sugar should be distributed, provided that the ultimate purchasers satisfied him as to their financial standing and as to the terms of the settlement.

Mr. Watson received a reply from the special assistant to the Attorney General in charge of the matter, stating that he would be permitted to import sugar on the terms which he had set forth, and that if he carried out the requirements of the Department of Justice as to prices and distribution, no prosecutions under the Lever Act would arise therefrom. It will be observed that the correspondence contained no assurances that the Department of Justice would supply purchasers for the sugar. Neither did the Department agree to indemnify him against loss. It is not claimed that Mr. Watson was under any obligation to share the profits, if he had realized any, with the Government.

Apparently Mr. Watson asserted, however, that there were certain conversations with representatives of this Department in which the latter stated that they would take the sugar "off his hands." As stated above, he later imported 3,500 tons of sugar which he was compelled to resell at a loss because of the fall in prices.

It is quite apparent that Mr. Watson imported the sugar as a business matter in the hope of realizing an appropriate profit. His expectations were disappointed by an unforeseen drop in prices. His purpose in approaching the Government apparently was to ascertain in what manner he could resell the sugar he expected to import and what profit he could realize without making himself amenable to prosecution under the Lever Act.

During the defense of a similar case in the Court of Claims (*Lamborn v. United States*, 106 C. Cls. 703) Robert A. Watson was interviewed by attorneys of this Department and he stated that he believed that he had a better claim against the United States than did Lamborn & Co., but that he did not believe he had any legal right to recover. It now appears that his administrator is seeking to assert a claim upon an alleged written agreement with the Department of Justice. This is the first time mention of a written agreement has been made.

During the hearing in the Lamborn case this Department was seriously handicapped by the fact that all parties to the original transaction were dead. The proper defense of the present claim will require a protracted and expensive search for evidence in this country and the Argentine, and it may be impossible to find any person with any knowledge of the facts. All of the customs records and ship's manifests showing importations of sugar have been destroyed. For this reason, the enactment of the bill may constitute merely an unmerited gift.

In the Lamborn case the words to enter such decree or judgment against the United States for such loss and damage as equity and justice shall require," which words were present in the act authorizing the hearing of the case and which are present in the instant bill, were interpreted by the Court as evidencing the intent of Congress that on terms of equity and justice plaintiffs were entitled to recover their losses. The Department of Justice took a contrary view and urged that by virtue of the enactment of the bill Congress was merely permitting the plaintiff to have a forum in which it could try its legal rights. Should the instant bill be enacted such language would doubtless be interpreted by the Court, in the light of the Lamborn decision, as a direction to enter judgment for the losses which claimant sustained. Moreover, while claims against the United States do not usually bear interest, Lamborn & Co., received interest on its claim which the court fixed at 5 percent. The present bill provides for such interest and because of the great lapse of time interest alone will amount to about 150 percent.

It does not appear that the bill has any true merit and its effect is to cast an unfair burden upon the Government in requiring it to defend a suit based on transactions executed almost 30 years ago. Accordingly, the Department of Justice is unable to recommend enactment of the bill.

A similar bill (S. 733, 75th Cong.) was vetoed by the President on June 15, 1937 (Congressional Record vol. 81, p. 5805). In this veto message the President said:

"I fail to find any moral obligation on the part of the United States to recompense Mr. Watson for his losses or any reason for depriving the Government of a defense directed to the merits of the claim."

The Director of the Bureau of the Budget has advised this Department that there would be no objection to the submission of the report on the bill (S. 2585), an identical bill, to the committee, as the enactment of the proposed legislation would not be in accord with the program of the President.

Yours sincerely,

PEYTON FORD,

The Assistant to the Attorney General.

[S. Doc. No. 81, 75th Cong., 1st sess.]

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES RETURNING WITHOUT APPROVAL THE BILL (S. 733) ENTITLED "AN ACT CONFERRING JURISDICTION UPON THE COURT OF CLAIMS TO HEAR, DETERMINE, AND RENDER JUDGMENT ON THE CLAIM OF ROBERT A. WATSON"

To the Senate:

I return herewith, without my approval, Senate bill 733, "An act conferring jurisdiction upon the Court of Claims to hear, determine, and render judgment on the claim of Robert A. Watson."

This bill proposes to confer on the Court of Claims jurisdiction over the claim of Robert A. Watson against the United States "for damages arising out of his purchase of 3,500 tons of sugar in the Argentine Republic in June 1920, and his importation of such sugar into the United States subject to the direction of the Department of Justice." The bill further proposes to bar the United States from availing itself of the defense that the Department of Justice acted without legal authority in issuing directions or fixing restrictions with regard to such importations.

The records show that Mr. Watson has been asserting a claim against the United States in an amount exceeding the sum of \$700,000, as a result of certain importations of sugar from the Argentine Republic into the United States which resulted in losses to him.

In 1920, there was a shortage of sugar in the United States. The Department of Justice, which was charged with the enforcement of the antiprofitteering provisions of the Food Control Act, approved the plans of a number of dealers, among them Mr. Watson, to import sugar from the Argentine, agreeing that if the merchandise were resold at prices and in the manner approved by departmental representatives no prosecutions would be instituted in respect of such transactions under the above-mentioned statute.

It appears that Mr. Watson thereupon imported approximately 3,500 tons of sugar and that as a result of an unexpected fall of prices, he was constrained to dispose of the merchandise at a loss. The records indicate that he asserts that a subordinate of the Department of Justice had entered into an oral understanding with him to find purchasers for the sugar upon its arrival in this country, and that he failed to fulfill this obligation.

It is quite evident that Mr. Watson imported the sugar as a business matter and assumed the usual hazards of such a venture. The object of his conferences with a representative of the Department of Justice appears to have been to obtain an assurance that if he complied with certain restrictions and did not resell the sugar at an excessive profit, he would not be subject to prosecution under the Food Control Act.

The bill proposes not only to permit Watson to sue the Government for damages said to have resulted from a breach of an alleged oral commitment of a very unusual and far-reaching character, claimed to have been made by a subordinate, but also to bar the Government from advancing the defense that its representatives had no authority to bind it in such manner.

I fail to find any moral obligation on the part of the United States to recompense Mr. Watson for his losses, or any reason for depriving the Government of a defense directed to the merits of the claim. The Attorney General and the Director of the Budget have informed me that after careful investigation they cannot recommend approval of this bill.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
June 15, 1937.

